

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THOMAS C. RANKIN and DEPARTMENT OF AGRICULTURE,  
FOREST SERVICE, Alpine, CA

*Docket No. 03-1008; Submitted on the Record;  
Issued November 5, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on or after July 10, 2002 causally related to his May 11, 2002 injury.

On May 11, 2002 appellant, then a 50-year-old forestry technician/firefighter, sustained an employment-related left quadriceps strain when he injured the upper thigh of his left leg during a physical conditioning pack hike. He stopped work that day and received continuation of pay for the period May 12 to July 9, 2002 when he returned to limited duty. In a report dated June 10, 2002, Dr. Michelle Hamid, appellant's treating physician, advised that appellant was to return for treatment on an as needed basis. On July 9, 2002 appellant returned to light duty.

On November 15, 2002 appellant filed a claim for a recurrence of disability. Appellant stated that he noted a loss of muscle strength in his left leg and hip.

On September 10, 2002 Dr. Gilbert E. Boswell, a Board-certified radiologist, advised that a magnetic resonance imaging (MRI) scan of the pelvis and bilateral hips revealed bilateral osteoporosis of the hips, more on the left. He also noted that signs of avascular necrosis were not clearly present.

In a report dated September 16, 2002, Dr. Thomas W. Harris, a Board-certified orthopedic surgeon, noted appellant's left upper thigh ache/pain without radiation and reported appellant's history of injury from July 3, 2001. He reported that appellant's September 10, 2002 MRI scan revealed osteoporosis and did "not meet the classic characteristics of avascular necrosis." Upon examination, appellant's hip showed no effusion with negative erythema or edema with ecchymosis and tenderness of the left upper thigh and tenderness around the left inguinal area. Dr. Harris noted no visible or palpable muscle spasm and appellant's passive flexion range of motion was 120 degrees on the right and 120 degrees on the left with increased pain. He diagnosed mild left hip arthritis and ruled out avascular necrosis. Dr. Harris further stated, "[t]he aforementioned injuries are a direct result of the accident which occurred on May 11, 2002, and the patient's description of the mechanism of the accident as well as the

finding on physical examination are consistent with the injury.” He requested authorization for a bone scan of the left quadriceps to rule out avascular necrosis. He placed appellant on total disability for 30 days. On September 30, 2002 Dr. Harris diagnosed appellant with mild left hip arthritis and again requested authorization for a bone scan to rule out avascular necrosis and stress fracture. An October 1, 2002 lumbar spine bone density evaluation read by Dr. David W. Buckley, a Board-certified radiologist, revealed osteopenia.

On October 2, 2002 the Office of Workers’ Compensation Programs requested that Dr. Harris provide a supplemental medical report to establish appellant’s total disability from September 16, 2002 as a result of his May 11, 2002 work-related left quadriceps strain. In an October 16, 2002 report, Dr. Harris noted that appellant had been scheduled for a bone scan and that a bone density examination revealed osteopenia of the proximal femur.<sup>1</sup> He again requested authorization for a bone scan and advised that appellant remained totally disabled. In a telephone call summary dated November 4, 2002, the Office noted that it had authorized a bone scan evaluation. On November 5, 2002 the Office advised Dr. Harris that, as a result of the bone density evaluation and his October 16, 2002 report finding of osteopenia, it rescinded authorization for a bone scan. The Office further advised Dr. Harris that if he believed that appellant’s current condition was work related, he should provide a supplemental report with medical rationale in support of his opinion. The Office also advised appellant that he could pursue a possible recurrence of disability claim through his employing establishment.

In a report dated November 11, 2002, Dr. Harris advised that appellant had a history of injury to his thigh from climbing and holding a big pack. He noted degenerative changes of the hip and ruled out avascular necrosis. Dr. Harris opined that appellant’s hip and thigh pain “could very easily be coming from the hip,” and advised that appellant’s preexisting arthritis “could certainly be aggravated by work.” He released appellant from care effective that day.

In a decision dated December 5, 2002, the Office denied appellant’s claim on the grounds that the medical evidence failed to establish that his current condition was causally related to his work-related injury.

The Board finds that appellant failed to establish a recurrence of disability causally related to his May 11, 2002 work-related injury.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.<sup>2</sup>

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<sup>1</sup> Osteopenia is defined as reduced bone mass due to a decrease in the rate of osteoid synthesis to a level insufficient to compensate normal bone lysis. The term is also used to refer to any decrease in bone mass below normal. *DORLAND’S Illustrated Medical Dictionary* (29<sup>th</sup> ed. 2000).

<sup>2</sup> *Barry C. Petterson*, 52 ECAB 120 (2000).

In this case, appellant has not shown a change in the nature and extent of his work-related injury or of the light-duty requirements. The record shows that, following the May 11, 2002 work-related left quadriceps strain, appellant returned to light duty on July 10, 2002. The record does not establish, nor does appellant allege, that the claimed recurrence of total disability was caused by a change in the nature or extent of his light-duty job requirements. Further, appellant has not submitted sufficient medical evidence establishing that the accepted condition has materially changed or worsened since his return to work on July 10, 2002.

The medical evidence of record that addressed appellant's current condition included a September 10, 2002 MRI scan that demonstrated bilateral osteoarthritis of his hips. Dr. Harris, appellant's Board-certified treating surgeon, submitted a September 16, 2002 report in which he placed appellant on total disability for 30 days as a result of left hip arthritis and advised that the condition was due to the May 11, 2002 employment injury. However, Dr. Harris did not include a medical rationale explaining how or why appellant's arthritis and resulting disability for work were caused by his employment injury.<sup>3</sup> Dr. Harris' September 30, 2002 report diagnosing left hip arthritis similarly did not include a rationalized medical opinion establishing a causal relationship between that condition and appellant's employment. The October 1, 2001 bone density evaluation revealed osteopenia. In an October 16, 2002 report, Dr. Harris merely repeated his request for a bone scan and included no rationalized medical opinion establishing a causal relationship between appellant's work-related left quadriceps strain and his continuing disability. In a November 11, 2002 report, Dr. Harris stated that appellant had degenerative changes of the hip, that his pain "could very easily be coming from the hip" and that his preexisting arthritis could have been aggravated by work. This report did not discuss how the current condition of left hip arthritis was causally related to his accepted injury.

By letters dated October 2 and November 5, 2002, the Office request that Dr. Harris explain how appellant's current condition, including osteopenia, was related to the May 11, 2002 employment injury. While Dr. Harris advised that appellant's condition could have been aggravated by work, he failed to identify specific employment factors or their relationship to appellant's condition and disability. As his reports were merely conclusory, they were of diminished probative value and insufficient to show a change in the nature or extent of appellant's employment-related condition.<sup>4</sup> The Board finds that appellant failed to submit rationalized evidence supporting a causal relationship between his accepted employment injury and a recurrence of disability after July 10, 2002. Thus, he has failed to meet his burden of proof.

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<sup>3</sup> *Annie L. Billingsley*, 50 ECAB 210 (1998).

<sup>4</sup> *Albert C. Brown*, 52 ECAB 152 (2000).

The December 5, 2002 decision of the Office of Workers' Compensation Programs is affirmed.<sup>5</sup>

Dated, Washington, DC  
November 5, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>5</sup> The Board notes that, in a letter dated December 29, 2002, appellant requested an oral hearing. The Board and the Office, however, may not have concurrent jurisdiction over the same issue in the same case; *see Douglas E. Billings*, 41 ECAB 880 (1990). Appellant also submitted medical evidence subsequent to the December 5, 2002 decision. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).